

(1:09-cr-00017-GCM-DLH-1)

Respondent.

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Petitioner may have proximately caused to the victim. United States v. Burgess, 684 F.3d 445 (4th Cir.), cert. denied, 133 S. Ct. 490 (2012). Petitioner's resentencing hearing is scheduled for August 27, 2015.

On February 26, 2015, the Court dismissed his motion to vacate his sentence which he filed *pro se* pursuant to 28 U.S.C. § 2255, and the Fourth Circuit dismissed his appeal. See United States v. Burgess 604 F. App'x 268 (4th Cir. 2015) (unpublished). On August 17, 2015, Petitioner's present petition under 28 U.S.C. § 1651 was docketed and assigned to this Court.

Under the All Writs Act, as codified in § 1651, federal courts are empowered to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." However, petitioners are precluded from proceeding under § 1651 when their claims are cognizable under § 2255. See Ortiz v. United States, 555 F. App'x 261, 262 (4th Cir. 2014) (unpublished) (citing United States v. Rhines, 640 F.3d 69, 72 (3d Cir. 2011); United States v. Gamboa, 608 F.3d 492, 494-95 (9th Cir. 2010)). As explained by the Supreme Court, § 1651 "is a residual source of authority to issue writs that are not otherwise covered by statute," and, "[w]here a statute specifically addresses [a] particular issue . . . , it is that authority, and not the All Writs Act, that is controlling." Ortiz, supra (quoting Carlisle v. United States, 517 U.S. 416, 429 (1996) (internal quotation marks omitted)).

Petitioner's challenge to the legality of his criminal judgment and present confinement are precisely the claims which must be pursued under the provisions of § 2255. Accordingly, for the foregoing reasons the Court finds that Petitioner's § 1651 petition should be denied.

IT IS, THEREFORE, ORDERED that Petitioner's § 1651 petition is **DENIED**. (Doc. No. 1).

The Clerk of Court is respectfully directed to close this civil case.

IT IS SO ORDERED.

Signed: August 19, 2015

A handwritten signature in cursive script, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

